IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.1079 OF 2006
IN
CRIMINAL APPEAL 263 OF 2005

Girishchandra Ramkrishna Joshi ....Applicant
R/o.Dudh Sagar Co.Operative Society, (Orig.Accd.No.1)
Near Aarey Checknaka, Goregaon(E),
Mumbai-400 065.
(Presently lodged in Kolhapur Jail)

V/s.

1. Union of India(CBI-Mumbai at the
instance of Union Bank of India) ...Respondent No.1
(Orig.Compl.)

2. State of Maharashtra ...Respondent No.2

Shri.A.P. Mundargi with Shri.R.R. Sharma for the applicant.
None for the Respondents.

CORAM : V.M. KANADE, J.

DATED : 25/01/2007

P.C.:-

1. Heard learned counsel for the applicant. None appears on behalf of Union of India and other respondent though they are served. Even on the last date i.e. 19th January, 2007 this court had directed the applicant to again serve respondents. It was made clear in the order that on the next date, if none appears on behalf of

respondents, the matter would be decided in their absence.

2. Learned Sr. counsel Shri.Mundargi appearing on behalf of applicant has brought to my notice letter written by advocate on record, dated 22/01/2007 whereby notice was given to the Superintendent, CBI, Mumbai informing that matter would appear on board today. In spite of this fresh notice being served on the respondents, none appears on behalf of the respondents. Bail application of present applicant was initially rejected by this court by order dated 07/04/2005. Against the said order SLP was preferred by the applicant. The said SLP, however, was dismissed. However, liberty was granted to the applicant to move the High Court for early hearing in terms of earlier order passed by this court with a direction that the appeal is to be heard within a period of six months. Said order was passed on 28th April, 2006.

3. It is an admitted position that appeal is still pending and is not yet decided. Learned counsel for the applicant has submitted that if the appeal is not heard within a reasonable period of time, the application would become infructuous. This is the only ground on

which the present application has been preferred. He submitted that the applicant is in jail since February, 2005. Period of two years have already elapsed. He further submitted that this is a fresh cause of action and therefore, the applicant is entitled to be released on bail.

4. Taking into consideration the fact that since main appeal is not yet heard as directed by the Apex Court, the applicant is entitled to make fresh application for bail. Apex Court in the case of **Akhtari BI (SMT) Vs. State of M.P. Reported in (2001)4 Supreme Court Cases 355** has held that prolonged delay in disposal of the trials and thereafter appeals in criminal cases, confers a right upon accused to apply for bail. Supreme Court has also held in catena of cases that if the accused had undergone 50% of the sentence then he would be entitled to be released on bail. Section 436(A) of Cr.P.C. also lays down similar principles in respect of under-trial prisoners. Section 436(A) reads as under:-

> "436(A). Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law(not being an offence for

which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

5. Since the applicant has practically undergone 50% of the sentence, in my view, he would be entitled to be released on bail. The applicant is released on bail in the sum of Rs.20,000/- with one or two local sureties in the like amount. The applicant shall report to CBI, Mumbai once in a month. The application is allowed in the above terms.

V.M. KANADE, J.